92-362

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

HISPANIC CHAMBER OF COMMERCE, et al.,

Appellants,

v.

ARIZONANS FOR FAIR REPRESENTATION, et al.,

Appellees.

Appeal From The United States District Court For The District Of Arizona

JURISDICTIONAL STATEMENT

JUDITH A. SANDERS-CASTRO
Mexican American Legal Defense and Educational Fund
140 E. Houston Street
Suite 300
San Antonio, TX 78205
(512) 224-5476
Counsel of Record

JOSE DE JESUS RIVERA
RIVERA, SCALES & KIZER
320 East McDowell
Suite 315
Phoenix, AZ 85004
(602) 253-2523

Attorneys for Appellants Hispanic Chamber of Commerce

COCKLE LAW BRIEF PRINTING CO., (800) 2[illegible]-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Whether the District Court, with no legislated plan before it, erred in finding no violation of Section 2 of the Voting Rights Act and therefore no requirement for remedial action in redistricting, in elevating nonconstitutional good government factors to primary considerations over minority voting rights and in failing to conduct a review of its own plan under Section 5 of the Voting Rights Act.

Whether the District Court erred in the use of incorrect causation standards to determine racially polarized voting does not exist in Arizona and in its rejection of uncontroverted evidence of racially polarized voting without explanation.

Whether the District Court erred by ordering into effect its own permanent plan for elections without exigent circumstances, allowing the state to circumvent Section 5 preclearance requirements for its congressional plan for an entire decade.

LISTING OF ADDITIONAL PARTIES

APPELLANTS

Hispanic Chamber of Commerce, Inc.
Arizona Hispanic Community Forum
Edward Valenzuela
Richard Zazueta
Valerie Ann Vidal

APPELLEES

The **San Carlos Apache Tribe,** a Federally Recognized Indian Tribe, and **Raleigh Thompson,** Chairman, and **Burnette Rope,** Vice Chairman, and as Individual Tribal Members, **Vernon Masayesva,** Chairman, **Loris Minkler** and **Wayne Taylor, Jr.,** Individual Tribal Members of the **Hopi Indian Tribe,** a Federally Recognized Indian Tribe **The Tonto Apache Tribe,** a Federally Recognized Indian Tribe, **Louise C. Lopez,** Chairman, **Jeri Johnson,** Vice Chairman, and as Individual Tribal Members, **Yavapai-Apache Indian Community, Camp Verde Reservation, David Kwail,** Chairman, **Stanley Jackson,** Vice Chairman, and as Individual Tribal Members, **The Havasupai Tribe,** a Federally Recognized Indian Tribe, **Don Watahomigie,** Chairman, **Thomas Siyuja, Sr.,** Vice Chairman, and as Individual Tribal Members, **The Cocopah Indian Tribe,** a Federally Recognized Indian Tribe, **Pete Sotos, Individual Tribal Members**

J. Fife Symington, Governor of the State of Arizona

Richard D. Mahoney, Secretary of State of the State of Arizona

Arizona State House of Representatives

Arizona State Senate

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OPINIONS BELOW

The April 30, 1992 Memorandum Decision and Order of the three judge court has not yet been officially reported. It was filed in the United States District Court for the District of Arizona in case number 92-256-PHX-SMM, and is set out in the accompanying Appendix at App. 1a.

JURISDICTION

The Order appealed from was filed May 5, 1992. An extension of time to August 27, 1992, to file Appellants' Jurisdictional Statement was granted on July 21, 1992. This Court has jurisdiction pursuant to 28 U.S.C. § 1253.

STATEMENT OF THE CASE

The State of Arizona experienced a population growth over the decade of the 1980's that entitled the State to a new, sixth congressional district following the 1990 Census and the apportionment of congressional representation to the states. App. 1a.[1] Apportionment Population and State Representation: Communication from the President of the United States, H.D. 102-18, p. 3 (January 7, 1991). The combined minority population of Arizona grew from 25.4% of the total population in 1980 to 28.9% in 1990. All minority populations grew at rates faster than

[1] References to the Appendix shall be noted as App. ___ a.

the non-minority population. The Hispanic population alone experienced a 52% increase. Prior to the 1990 census, the state congressional delegation was limited to five members. Of the five districts electing congressmen, one (district 2) had a majority combined minority population of 58% that had elected the first minority (Hispanic) congressman for the State in a special election in 1991.

The Arizona State legislature undertook the process of redistricting during the first 1992 regular session. App. 2a. This litigation was commenced by a non-profit organization, Arizonans for Fair Redistricting, and three voters of Arizona, all non-minority, on February 7, 1992, during the course of that legislative session and prior to adoption of any legislative or congressional redistricting plan by the legislature. App. 1a. The Arizonans' complaint asked the district court to accomplish Arizona's congressional redistricting due to an asserted deadlock between the two houses of the bicameral legislature over the issue of redistricting during the session. *Id.* The deadlock, asserted in early February, fixed in late February with regard to congressional redistricting once the district court demonstrated its interest in a quick disposition of the case. The legislative session did not end until late June, 1992.

On March 3, 1992, the district court issued a pre-trial order setting the schedule and regulating activity in the litigation on the congressional case only. The hearing on plans presented by parties was scheduled for April 13, 1992. The court realigned two State defendants, the governor and the State House, as plaintiffs with the Arizonans for Fair Representation. App. 2a. The court allowed the intervention as plaintiffs of several minority parties,

including (1) the Hispanic Chamber of Commerce and the Arizona Hispanic Forum, (2) several Native American Tribes and (3) Ed Pastor, congressman for existing district 2. *Id.*

Two original and all intervening parties presented plans to the court. *Id.* Plans presented by the Hispanic appellants, Plaintiff Intervenor Pastor, and the Arizona Senate created two districts that contained a majority of combined minority populations. The plan presented by the Arizona House of Representatives, supported by the Arizonans for Fair Representation, created one very high majority minority population. The plan presented by the Indian Intervenors created only one majority minority district, at a lower level than the House plan's minority district.

During the course of the five day hearing on the attributes of the parties' plans, limited evidence showing the malapportionment of the existing five congressional districts as compared to the ideal district in a six district plan was presented to the court. App. 3a. Following the parties' presentation of evidence in support of their plans to the court, the court appointed as its advisors the technical staff for the Senate and the House. App. 20-1a. The attorney representing the Attorney General's office for the State of Arizona in the proceedings before the court was designated special counsel to the court. App. 21a.

The district court issued an order April 30, 1992, filed with the Clerk May 5, 1992. The court ordered its own plan into effect for congressional districts. App. 9a. The court also authorized the use of all precinct and polling place changes on an interim basis, due to the proximity of

the candidate filing period, scheduled to begin in three weeks, on May 26, 1992, and end on June 25, 1992. App. 19-20a. Finally, the court ordered its plan into effect through the year 2000, until and unless the Arizona legislature enacts and receives preclearance of a different redistricting plan. App. 20a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. INTRODUCTION

This case involves substantial questions concerning the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution as those provisions are applied when a court undertakes a legislative redistricting task. Additionally, this case involves substantial questions as to the authority accorded a district court to undertake a legislative redistricting task. Specifically, this case involves the standards to be applied by a court in analyzing a proffered redistricting plan or developing its own for a jurisdiction covered by Section 5 of the Voting Rights Act and the criteria that must be met before a court seeks to impose its own plan for redistricting, circumventing the legislative process and Section 5 preclearance requirements.

The district court below adopted a permanent court-drawn plan for congressional elections in Arizona as the State legislature, it determined, was at an impasse even though still in session. Although recognizing that all plans before it met one-person, one-vote constitutional standards, the court determined to impose its own plan because it found that plan superior to all proposed plans

in meeting "good government" criteria. The court erroneously found no violation of Section 2 of the Voting Rights Act, despite having no issue of liability before it. Therefore, the court did not analyze any proposed plan or its own plan for impact on minority voters under Section 5 standards. Further, because the Court had erroneously found no violation of Section 2 of the Voting Rights Act, it undertook no use of racial criteria in fashioning its plan. Finally, the court found no evidence of racially polarized voting in the State despite the unanimous presentation of evidence by parties demonstrating the existence of racially polarized voting.

In implementing the modified litigant's plan as a court drawn plan, rather than choosing a litigant's plan or deferring to the legislature, the court made no findings of exigent circumstances. With the adoption of a court-drawn plan, the court ordered into effect a permanent plan that circumvented Section 5 preclearance requirements, again avoiding review of the impact of the State's congressional plan on minority voters. With adoption of the plan for use until the year 2000, Arizona's avoidance of review of the impact of its congressional plan on minorities will last the entire decade.

The effect of the district court's erroneous order has been to completely avoid consideration of minority voters in the congressional redistricting process for the State of Arizona.

II. WITH NO LEGISLATED PLAN BEFORE IT, THE DISTRICT COURT ERRONEOUSLY FOUND NO VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT REQUIRING REMEDIAL ACTION IN REDISTRICTING, ELEVATED NONCONSTITUTIONAL GOOD GOVERNMENT FACTORS TO PRIMARY CONSIDERATION OVER MINORITY VOTING RIGHTS, AND FAILED TO CONDUCT A REVIEW OF ITS OWN PLAN UNDER SECTION 5 OF THE VOTING RIGHTS ACT

In its Memorandum of Decision and Order, issued April 30, 1992, the district court ordered into effect its own plan for election of congressional representatives from Arizona. App. 9a. The court's plan created one majority combined minority district, district 2, at 61% minority population, out of the six districts. App. 9-10a. The Court determined that its own plan best addressed good government concerns. App. 17a.

The district court's fashioning of an appropriate good government plan for implementation for Arizona congressional districts was predicated on its conclusion that no violation of Section 2 of the Voting Rights Act existed. App. 8-9a. Because no Section 2 violation existed, the court determined it was not required to take remedial action under the Voting Rights Act in fashioning the redistricting plan. App. 8a. As no remedial action was required under Section 2, the court determined redistricting plans were only required to meet the constitutional standard of one-person, one-vote and non-constitutional "good government" considerations. App. 9a. The good government criteria used by the court included geographical compactness and contiguity, preservation of

communities of interests and existing districts, and the unnecessary and invidious outdistricting of incumbents. App. 5-7a. Once the court found that no violation of the Voting Rights Act existed, the court then evaluated all other plans for levels of deviation and conformance with "good government" standards. App. 4a and 15-22a. The Court applied the criteria without regard to impact on minority voters of the state. *Id.* The Court rejected all other plans as failing to adequately comply with good government standards. App. 9a.

The district court reached its determination that there was no violation of Section 2 of the Voting Rights Act without having a question or controversy before it or presentation of evidence on the issue. There was in fact no redistricting "plan" as such, adopted by the legislature. All parties recognized that the previous five district plan could not be used because of the addition of a new district for congressional elections. The court had simply been asked to review proposals and to select or create a new plan because the legislature could not. There were no issues of liability before the court.

The only conceivable purpose of the court's finding with regard to Section 2, therefore, was to allow the elevation of secondary neutral factors, or "good government" factors, to a primary level of consideration over minority voting rights. By doing so, the court was able to justify its resulting congressional redistricting plan. The court's actions wrongly presumed that consideration of race or ethnicity of voters in redistricting, or race conscious redistricting, was only required accomplished where a violation of a constitutionally or statutorily protected right was demonstrated to have occurred.

The responsibility for state wide redistricting is first and foremost that of the state legislature. *Wise v. Lipscomb*, 437, 539 (1978). When it becomes necessary for a district court to assume the "unwelcome obligation" of devising and/or approving redistricting plans, however, courts must adopt plans that will not be potentially subject to future challenges. *Connor v. Finch*, 431 U.S. 407, 425 (1977) (*Connor*). Discharge of the obligation requires a court to adhere more strictly to the constitutional and federal statutory standards governing redistricting than a state legislature in the process. *Wise v. Lipscomb*, 437 U. S. 535, 540 (1978) (*Wise*). Further, a federal court must act "circumspectly, and in a manner 'free from any taint of arbitrariness or discrimination.' " *Connor*, 431 U.S. at 415 (quoting *Roman v. Sincock*, 377 U.S. 695, 710 (1964)).

Where a court in a Section 5 covered jurisdiction is faced with the task of choosing among plans or fashioning its own plans because of inaction by a legislature, there is no plan before the court for analysis under Section 2 of the Act. Therefore, there can be no determination with regard to the "results" of a plan, as the court made here. Rather, the concern of the court is the evaluation of plans under the primary criteria of 1) one-person, one-vote and 2) potential impact on minority voters with regard to Section 5. *McDaniel v. Sanchez*, 452 U.S. 128 (1981) (*McDaniel*). When a court orders its own plan into effect it is required to examine the compliance of that plan with Section 5 requirements. *McDaniel*, 452 U.S. at 149.

This Court has specifically rejected the limitation of race conscious redistricting to only circumstances where

effects of past discriminatory districting or apportionment are demonstrated. *United Jewish Organizations, Inc. v. Carey,* 430 U. S. 144 (1977) (*Carey*). Indeed, in a covered Section 5 jurisdiction, this Court has instructed that a lower court, functioning in lieu of a legislative body, must accomplish race conscious redistricting to avoid abridgment of the right to vote on account of race or color under Section 5 of the Voting Rights Act. *Carey, supra; Beer v. United States,* 425 U. S. 130 (1976).

Not only did the district court here not accomplish a race conscious redistricting, it undertook absolutely no analysis of its own plan under Section 5 of the Voting Rights Act. It made no findings with regard to Section 5 at all. The court completely ignored the impact of its actions on minority voters. Having determined that it would be absolved from analysis of the impact of its plan on the position of minority voters in the state when it found no violation of Section 2 of the Voting Rights Act, the district court asked an unnecessary question, answered it, and then used that answer to justify an impermissible result in redistricting Arizona's congressional districts.

Furthermore, the court's elevation of good government factors to primary consideration, over minority voting rights, allowed the court to fragment the minority population not placed in district 2 among the remaining five districts.[2] Had the court conducted an analysis of its

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[2] Arizona, like most other states, has population concentration pockets surrounded by rural areas with sparse population. The district court's plan anchors all districts in at least one of two major population centers. All districts have both urban and

own plan under the retrogression standards of Section 5, it would have had to conclude that the plan was retrogressive because it created only one majority minority district of six, as compared to the one of five in the State's previous plan, and fragmented the remaining minority population.

III. THE DISTRICT COURT'S ERRONEOUS SECTION 2 DETERMINATION RESTED ON A BLANKET DISAVOWAL OF RACIALLY POLARIZED VOTING WHICH WAS BASED ON INCORRECT STANDARDS AND ITS REJECTION OF UNCONTROVERTED EVIDENCE WITHOUT EXPLANATION

As part and parcel of its finding that no violation of Section 2 of the Voting Rights Act or abridgment of the right to vote because of race had occurred, the district court below found that parties had failed to prove the existence of racially polarized voting in Arizona. App. 8-9a. In very conclusory statements without any detailed explanation, the court found that expert testimony regarding polarization and voting behavior was unpersuasive and that statistical analysis of voting behavior presented by all parties failed to explain voting behavior. App. 7-8a. The court made no finding to explain why it ignored statistical evidence. The court simply said the statistical evidence made no sense to the court. App. 7a. What the court determined did explain the differences it

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rural populations. If the good government criteria were applied in a non-discriminatory manner, two majority minority districts should result.

recognized in voting patterns between Hispanics and non-Hispanics in Arizona elections was party affiliation and the electability of the candidate. App. 7-8a.

Moreover, the court found that the explanations for voter behavior it considered, those of party affiliation, financing of candidates, campaign strategy, etc . . . , should have been considered by the experts who presented unanimous evidence of racially polarized voting. *Id.* The failure of experts to consider those variables, the court concluded, rendered their testimony and supporting evidence unpersuasive. App. 8a.

The district court used an incorrect standard to determine the existence of racially polarized voting. Furthermore, the court's determination was not based on evidence before the court. All evidence presented to the court by all parties regarding racially polarized voting pertained to the degree of polarization, not to the absence of polarization between Hispanic and non-Hispanic voters. Finally, the court failed to explain in any comprehensible manner its reasoning for complete rejection of the uncontroverted record of racially polarized voting in Arizona.[3]

In *Thornburg v. Gingles,* this Court specifically rejected the analysis used by the district court here. The reasons or causations for voting patterns are not relevant to the central inquiry of whether voters of color and white voters vote differently. *Thornburg v. Gingles,* 478

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[3] Hispanic Intervenors presented evidence of cohesion of Hispanics and Native Americans in voting that the district court did not even cite in its opinion.

U.S. 30, 63-4 (1986) (*Thornburg*). All that is relevant is the correlation between the race of a group of voters and their selection of a candidate or candidates. *Id.* This Court concluded that the use of an analysis including the same variables relied on by the district court below for explanations as to differences in voting behavior between ethnic/racial groups "would thwart the goals Congress sought to achieve when it amended Section 2 and would prevent a court from performing a 'functional' analysis of the political process . . . " *Thornburg*, 478 U.S. at 62.

Additional variables, beyond the factor of race or ethnicity, distort the equation. *Thornburg*, 478 U.S. at 64. The analysis of vote dilution and racially polarized voting is a functional, practical one. The crucial inquiry is only the correlation between the race of the voter and the selection of certain candidates. *Thornburg*, 478 U.S. at 74. Once the prima facie case of racially polarized voting through that correlation has been established, it cannot be rebutted with evidence of causation or intent. *Id.*

The district court's findings with regard to racially polarized voting are dismally void of particularity of reasoning and subsidiary factual conclusions. *Westwego Citizens for Better Government v. Westwego*, 872 F.2d 120 (5th Cir. 1989). Having completely dismissed testimony of experts and supporting statistical evidence on the existence of racially polarized voting because they failed to consider causative variables, the court was unable to and failed to perform the functional analysis of racially polarized voting required by *Thornburg*.

While the court acknowledged the evidence was clear that differences existed between voting patterns of Hispanic and white voters, it found that none of the parties had proven a white majority voted sufficiently as a bloc to usually defeat minority preferred candidates. App. 8a. The court referenced no basis for its conclusions other than an unsupported statement that voting behavior of Arizonans is "closely associated with party affiliation." *Id.* That single causative variable, rejected in *Thornburg*, was apparently sufficient for this Court to rebut uncontradicted evidence of racially polarized voting.

The district court apparently relied on its blanket finding that no racially polarized voting exists in Arizona as the support for its determination that no violation of the Voting Rights Act existed which would require remedial action.[4] Its broad disavowal of racially polarized voting, based on erroneous standards, not only impacted the development of the court's plan, but also impacts the future application of Section 5 and Section 2 of the Voting

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[4] Despite determining that no remedial action was required and that polarized voting was not existent, the court's plan created one congressional district in which the combined minority population was 61% of the total population (50.46% Hispanic) for the purposes of complying with the Voting Rights Act and to provide Hispanics access to the political process. App. 10a and 25a. Further, the court fragmented Native American voters by placing Hopis in District 3 where they are 3.26% of the population, rather than in District 6 where Native Americans are 22% of the population. *Id.* That, the Court found, kept Native Americans from being minimized. App. 10a. The Court's apparent contradictory positions with regard to its obligations under the Voting Rights Act lends a taint of arbitrariness to its actions.

Rights Act to the State of Arizona and its political subdivisions, rendering those protections afforded minority voters of the state virtually ineffective. Moreover, the authority of the Department of Justice to carry out its statutory enforcement responsibilities in Arizona is undermined by the district court's erroneous findings.

IV. THE DISTRICT COURT ERRED BY ORDERING INTO EFFECT ITS OWN PERMANENT PLAN FOR ELECTIONS WITHOUT EXIGENT CIRCUMSTANCES AND THEREBY COMPLETELY CIRCUMVENTING SECTION 5 PRECLEARANCE REQUIREMENTS FOR AN ENTIRE DECADE

The circumstances of the failure of the legislature to redistrict placed the district court in the position of acting in the quasi-legislative capacity of selecting a congressional redistricting plan for Arizona. App. 8a. In the proceedings before the court there were no less than five plans offered by parties from which the court could have selected. App. 2a. Rather than selecting one of those plans, however, the court undertook to create its own plan for election by slightly modifying or "refining" a party's plan. App. 17a. Then relying on *McDaniel v. Sanchez*, the district court determined that its plan was not one reflecting the policy choices of the legislature, but was solely the creation of the court and did not require Section 5 preclearance under the Voting Rights Act. App. 18a.

In its April 30, 1992, order, the court made findings of exigent circumstances with regard only to expected precinct changes required by counties to comport with its plan. App. 19-20a. Those exigent circumstances were the

approaching candidate filing period scheduled to begin in twenty six days, ending June 25, 1992, and ballot printing for the August 6, 1992, beginning of absentee voting and September 8, 1992, primary, some three and four months down the road, respectively. App. 20a. Based on those exigent circumstances, the court authorized the interim use of precinct boundary and polling place changes for counties, waiving section 5 preclearance requirements for the 1992 elections, if preclearance was not obtained by June 1, 1992. App. 19a. The court made no such findings with regard to its own plan.

> "The one exception where Section 5 review would not ordinarily be available is where the court, **because of exigent circumstances,** actually fashions the plan itself instead of relying on a plan presented by a litigant. This is the limited meaning of the 'court decree' exception recognized in *Connor v. Johnson,* 402 U.S. 690 . . . Furthermore, in fashioning the plan the court should follow the appropriate Section 5 standards, including the administrative and judicial precedents developed under Section 5 cases." Senate Report, at 18-19.

McDaniel, 452 U.S. at 149, (emphasis added) (citations omitted). Exigent or emergency circumstances justifying the temporary circumvention of Section 5 requirements are the unusual case and can be accomplished on a temporary basis only. *Terrazas v. Clements,* 537 F.Supp. 514, 538 (N.D. Tex. 1982) (citing *Reynolds v. Sims,* 377 U.S. at 585-87, 84 S.Ct. at 1393-94). "[U]nder certain circumstances, such as where an impending election is imminent and a state's election machinery is already in progress,"

equitable considerations might justify a court's circumvention of Section 5, on a temporary basis only. *Id.*[5]

This litigation was filed in early February during the legislative session asserting an impasse in the legislative redistricting process, some eight months before the primary election. At the time of the trial, there were still four and one half months before elections. When the court issued its order adopting a plan for congressional elections, four months remained until the primary. The election process itself was still a month away from opening. The district court did not have and did not cite exigent circumstances authorizing its order of a court drawn plan, rather than selection of a litigant's plan, to avoid the preclearance process. The only exigent circumstances it contemplated were those which might be faced in a month by counties preparing for election. Moreover, the district court's plan was ordered as a permanent plan, to be used by the State through the year 2000.

This litigation was filed during the legislative session as plans were being considered. Once the three judge court was convened, all effort toward producing a legislative congressional redistricting plan stopped.[6] When the

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[5] Under this Court's recent ruling in *Clark v. Roemer*, the circumstances when a court can order unprecleared changes into effect on a temporary basis or circumvent Section 5 preclearance requirements because of an existing emergency would appear to have been narrowed. *Clark v. Roemer*, ___ U.S. ___, 111 S.Ct. 2098 (1991).

[6] The legislature was, however, able to continue development of its own redistricting plan for legislative districts. App. 2a. The impasse on the congressional redistricting was apparently rendered solid by the demonstrated willingness of the

court acted the legislature was in session and remained in session two more months. The court without deference to the legislature and without an emergency, however, determined to assume the state legislature's responsibilities.

Redistricting and reapportionment are legislative tasks which federal courts should make every effort not to preempt. *Wise*, 437 U.S. at 539. "Legislative bodies should not leave their reapportionment tasks to the federal courts." *Wise*, 437 U.S. at 540. Only when the legislature fails to act or an emergency exists, should federal court's assume the "unwelcome" obligation. *Id.*

The situation with Arizona is exactly what Congress sought to avoid when it strictly limited exceptions to the centralized preclearance process and structure established by Section 5.

> It is true, of course, that the federal interest may be protected by the federal district court presiding over voting rights litigation, but sound reasons support the Committee's view that the normal Section 5 preclearance procedures should nevertheless be followed in cases such as this. The procedures contemplated by the statute reflect a congressional choice in favor of specialized review – either by the Attorney General of the United States or by the United States District of Columbia . . . Moreover, if covered jurisdictions could avoid the normal preclearance process by awaiting litigation challenging a refusal to redistrict after a census is

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district court to undertake the matter quickly despite the ongoing legislative session and by either the Senate or the House's hope for better prospects before the court.

> completed, the statute might have the unintended effect of actually encouraging delay in making changes in district boundaries.

McDaniel, 452 U.S. at 151.

The federal court stepped in, and legislative action came to a screeching halt. The legislature did not address minority voting rights. The court issued an order circumventing Section 5 review of the plan for impact on minority voting rights. Exacerbating the court's erroneous circumvention of Section 5 preclearance review for congressional districts in Arizona was its absolute failure to comply with this Court's mandates in *McDaniel v. Sanchez*, of a Section 5 analysis of its own plan. See discussion, *supra*. Minority voting rights, and Section 5, were completely ignored in the Arizona congressional redistricting.

If the Arizona legislature does not act to redistrict the congressional districts within the decade, the district court's unreviewed court-ordered plan will remain in effect. From what has transpired in the State to date, it is clear that inaction for the Arizona legislature (as with most others) is easier to accomplish than action. Thus, the State of Arizona will be able to avoid Section 5 review of its congressional redistricting plan for the entire decade. In fact, the State may completely avoid review of any change in voting under Section 5 as a result of the district court's order.

CONCLUSION

THE DECISION OF THE COURT BELOW MUST BE REVERSED IN ITS ENTIRETY, AND REMANDED WITH INSTRUCTIONS.

What has occurred with regard to Arizona's congressional redistricting is likely to become the blueprint for jurisdictions throughout the south and southwest, seeking to circumvent Section 5. Jurisdictions like Arizona, will simply not act, delay legislative action until an "emergency" exists, or will block legislation.[7] The result of allowing courts to continue sanctioning Section 5 circumvention by jurisdictions will be the statute's effective repeal.

This frustration of the Voting Rights Act must stop now. It is not only contrary to public policy, it is offensive to public policy.

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[7] In fact, similar situations have already arisen in Houston, Texas, with regard to the city council, and in Texas, Alabama, Florida, and California, with regard to the legislature and congress, for example. Several counties in Texas, Bailey and Castro, are in the process of attempting circumvention of Section 5 through similar strategy.

For the reasons stated, Appellants respectfully request this Court note probable jurisdiction and hear this appeal on an expedited basis.

Dated: August 27, 1992

Respectfully submitted,

JUDITH A. SANDERS-CASTRO
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
140 E. Houston Street, Suite 300
San Antonio, TX 78205
(512) 224-5476
Counsel of Record

JOSE DE JESUS RIVERA
RIVERA, SCALES & KIZER
320 East McDowell, Suite 315
Phoenix, AZ 85004
(602) 253-2523

Attorneys for Appellants
Hispanic Chamber of Commerce, et al.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ARIZONANS FOR FAIR REPRESENTATION, et al., Plaintiffs, vs. J. FIFE SYMINGTON, et al., Defendants.	No. CIV 92-256-PHX-SMM **MEMORANDUM OF DECISION AND ORDER** (Filed May 5, 1992)

I. BACKGROUND

A. Procedural History

The total population of Arizona after the 1990 Census was 3,665,228. Decennial Census of Population and Housing, 1990, Publ. L. 94-171 (1991). As a result, Arizona is entitled to an additional congressional representative.[1] The state legislature has the responsibility for redistricting the congressional districts and state legislative districts. Ariz. Const. art. 22, § 12 (representatives to congress shall be elected "at such times and in such manner as may be prescribed by law.").

Pursuant to 28 U.S.C. sections 1331, 1343(3) and (4), and 1357, Plaintiffs, Arizonans for Fair Representation, brought suit in February 1992 when it appeared that the Arizona State Legislature was deadlocked on the issue of redistricting. Named as defendants were the Arizona

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[1] Apportionment Population and State Representation: Communication from the President of the United States, H.D. 102-18, p. 3 (January 7, 1991).

House of Representatives and the Arizona Senate. Arizona's Governor and Secretary of State also were named as nominal defendants.[2]

A three-judge panel was convened pursuant to 28 U.S.C. section 2284(a). After the filing of this suit, the House and the Senate adopted their respective plans, but failed to agree on a single plan.

Arizonans for Fair Representation supports the House plan and opposes the Senate plan. The governor also announced his support for the House plan through an affidavit. As a result, the court realigned the House and the Governor, designating them as plaintiffs along with Arizonans for Fair Representation. The court also allowed three groups to intervene: (1) the Hispanic Chamber of Commerce and the Arizona Hispanic Forum ("Hispanic Intervenors"), (2) several Native American Tribes, and individual Native Americans (the "Indian Intervenors") and (3) Ed Pastor, Congressman for the existing district two ("Congressman Pastor"). Each intervenor submitted its own plan, as required by the court. Additionally, the court authorized amicus curiae status for Peterson Zah (President of the Navajo Nation), the White Mountain Apache Tribe, the Gila River Indian Community and the National Association for the Advancement of Colored People. All of the amici support the Senate Plan.

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[2] Subsequent to filing this lawsuit, the Arizona Legislature passed a bill redistricting the state legislative districts. After the bill was signed by the Governor, it was forwarded to the Department of Justice for preclearance. As a result, the parties agreed to stay the lawsuit with regard to the state legislative redistricting. Thus, the only matter before this Court is the issue of congressional redistricting.

Because of the legislative impasse, the court must adopt or draw a plan which complies with the Constitution, 42 U.S.C. sections 1971 through 1973ff-6 (hereinafter referred to as the "Voting Rights Act"), and the neutral criteria which support the precept of good government. The court heard testimony and received evidence during a five-day trial.

B. Arizona's Physical and Demographic Characteristics

Arizona is unique. Approximately 27 percent of Arizona's land is located on Indian reservations, far and away the highest percentage in the United States. Other large portions of the state are devoted to National Parks and Forests. These factors, in part, account for the fact that Arizona is sparsely populated.

Arizona's urban areas contain the overwhelming bulk of the state's population. Almost 60 percent of Arizona's population is located in the metropolitan Phoenix area. When combined with metropolitan Tucson, over three-quarters of Arizona's population resides within these two urban areas. This is the background against which this court must adopt or draw a plan for Arizona's new congressional districts.

II. STANDARDS

There are three criteria used to evaluate redistricting plans: the Constitution, the Voting Rights Act, and the neutral principles of redistricting. There is a strict hierarchy among these criteria. The Constitution and the

Voting Rights Act must be satisfied before a court considers the neutral criteria.

A. Constitutional Requirements

The "one person, one vote" standard articulated in Article I, Section 2 of the United States Constitution guarantees the right of each citizen to an equal voice in the selection of a representative. *Wesberry v. Sanders*, 376 U.S. 1 (1964). Thus, "one man's vote in a congressional election is to be worth as much as another's." *Id.* at 8. As a result, the population within each state's congressional districts must be as nearly equal as practicable. *Id.* at 7-8. This requires a good-faith effort to achieve precise mathematical equality. Any deviations from precise equality, no matter how small, must be individually justified, unless unavoidable. *Karcher v. Daggett*, 462 U.S. at 725, 731 (1983).

Each of the plans submitted fulfilled this criteria. The maximum population deviation in a district under any of the plans submitted is one person. That deviation was unavoidable because Arizona's total population is not divisible by six.

B. Voting Rights Act

Section 2 of the Voting Rights Act of 1965, as amended in 1982, prohibits denying protected minorities an equal opportunity to elect representatives of their choice. 42 U.S.C. § 1973. The purpose of the Voting Rights Act is to prohibit stifling of minority political expression

by dilution of the voting strength of recognized minority groups.

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court articulated three preconditions to a claim of vote dilution under section 2 of the Voting Rights Act. First, the minority group must be sufficiently large and geographically compact to constitute a voting age majority in a single-member district. Second, the minority group must be politically cohesive. Third, the majority must vote sufficiently as a bloc so that, in the absence of special circumstances, it usually defeats the minority's preferred candidate. *Id.* at 50-51.

Additionally, the Voting Rights Act directs an inquiry under the "totality of the circumstances" test. The Senate Report accompanying the 1982 amendments explained that the amendments were intended to codify the "totality-of-circumstances" standards outlined by the Supreme Court in *White v. Regester*, 412 U.S. 755 (1973). Thus, a court can look to the history of discrimination suffered by a minority group, cultural and linguistic barriers to a minority group's participation in the political process, and the number of minority legislators elected to office from a particular state or district. *See Gingles*, 478 U.S. at 75-76 (discussing factors in the Senate Judiciary Committee Report accompanying the 1986 Voting Rights Act).

C. Neutral Criteria

Once the constitutional and Voting Rights Act standards are met, a court may look to several neutral criteria. These criteria are (1) preserving communities of

interest, (2) providing geographically compact and contiguous districts; and (3) avoiding unnecessary or invidious outdistricting of incumbents.

1. preserving communities of interest

A court can determine if the proposed lines preserve communities of interest. *Carstens v. Lamm,* 543 F. Supp. 68, 88 (D. Colo. 1982). This principle is important because it recognizes the importance of shared local experiences and the ability of groups and candidates to "network" within their communities. Thus, a state has a substantial interest in preserving city and county lines. *South Carolina State Conf. of Branches v. Riley,* 533 F. Supp. 1178, 1180 (D. S.C. 1982), *aff'd,* 459 U.S. 1025 (1982). Preserving these communities of interest also enables a congressman to represent his constituency better. Therefore, the aim is to preserve compatible political interests. *See Carstens* 543 F. Supp. at 88; *LaComb v. Growe,* 541 F. Supp. 145, 148 (D. Minn. 1982), *aff'd,* 456 U.S. 966 (1982).

2. geographically compact and contiguous districts

Closely related to preserving communities of interest is the goal of creating geographically compact and contiguous districts. *Riley,* 533 F. Supp. at 1181; *Carstens* 543 F. Supp. at 87-88. Districts that are geographically compact and contiguous are less likely to suffer from the ills of gerrymandering. Furthermore, they assist in maintaining communities of interest.

3. avoiding unnecessary or invidious outdistricting of incumbents

The court also should avoid unnecessary or invidious outdistricting of incumbents. *Riley*, 533 F. Supp. at 1180-81. Unless outdistricting is required by the Constitution or the Voting Rights Act, the maintenance of incumbents provides the electorate with some continuity. The voting population within a particular district is able to maintain its relationship with its particular representative and avoids accusations of political gerrymandering.

While these criteria cannot replace those established by the Constitution or federal statutory law, they do provide a guideline for drawing districts that are "politically fair," not only to the elected representatives, but to the constituents they represent.

III. DISCUSSION

The parties have attempted to make this a trial of numbers. Their experts spoke in terms of Bivariant Regression Analysis, Homogeneous Precinct Analysis, Direct Polling, Deviation Analysis, the Circumscribing Circle Test, the Perimeter Circle Test and the Polygon Test, to name a few. This case encompasses far more than that. The testimony of the lay witnesses provided the court with a meaningful interpretation of the cold hard statistics.

Among the lay witnesses, Congressman Ed Pastor, himself an intervenor, stated that finances, the quality of the candidate, campaign strategy, party affiliation and geographical residence of the candidate often played a

major role in the electability of a candidate. State Senators Gutierrez and Rios also testified that quality of a candidate and money were major factors in an election. The experts failed to consider this information in offering their opinions. The court concludes these factors offered greater insight into the voting patterns of Arizonans, which were more helpful than the voting patterns proffered by the parties' experts.

Accordingly, the court also finds that the parties, and particularly the Senate, failed to demonstrate that there has been a denial or an abridgement of the right to vote on account of race or color, requiring remedial action under the Voting Rights Act. As previously mentioned, each party brought in one or more experts to explain Arizonans' voting behavior. The testimony revealed that there are numerous methods of gathering information on polarization. Indeed, there was disagreement among the experts on which method provided the most reliable evidence. The court did not find the experts' opinions in this area persuasive.

It was clear from all of the evidence that there are some differences between the voting patterns of Hispanics and non-Hispanics. However, none of the parties proved that a white majority voted sufficiently as a bloc so that it usually defeated a minority's preferred candidate. *See Gingles*, 478 U.S. at 48-49 (holding bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group). Instead, the evidence showed that Arizonans' voting behavior is also closely associated with party affiliation. Accordingly, the court finds that the

parties have not satisfied the third prong of the *Gingles* test.

After examining all of the plans, the court finds that the Indian Compromise Plan best meets the constitutional and neutral criteria. Therefore, the Indian Compromise Plan forms the basis for the court-drawn districts.

A. Constitutional

The plan we adopt is faithful to the constitutional requirement of "one person, one vote."[3] Arizona has a total population of 3,665,228 people. Accordingly, the ideal congressional district contains 610,871 people. The court's plan achieves this goal. The slight deviation of one person in some of the districts is due to the fact that Arizona's population is not divisible by six.

B. Voting Rights Act

The plan we adopt also comports with the requirements of the Voting Rights Act by giving Arizona's Hispanic population an opportunity to elect a candidate of their choice in district two. One of the most controversial issues during the trial was the percentage of Hispanics that should be included in district two in order to comply with the Voting Rights Act. Opinions ranged from 40 percent to over 60 percent of the total population.

Under the House plan the voting age population of Hispanics would be 51.1 percent and under the Senate

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[3] It is undisputed that the current congressional districts are unconstitutional.

Plan the voting age population of Hispanics is 44.6 percent. The court plan creates a district where 50.46 percent of the population in district two is Hispanic with an Hispanic voting-age population of 44.77 percent. As previously mentioned, the court finds that there has been unpersuasive evidence showing that the white majority in district two votes sufficiently as a bloc usually to defeat a Hispanic voter's candidate of choice. *See Gingles*, 478 U.S. at 49. Consequently, a congressional district in which Hispanics comprise 50.46 percent of the total population and 44.77 percent of the voting age population is sufficient to provide them access to the political process.

Although there has been no proof that the Native Americans are entitled to a reapportionment plan designed to maximize their political advantage, they should not be engulfed in a structure that minimizes their potential for meaningful access to the political process. The Indian Intervenors proved that there have been widespread practices of discrimination against Native Americans. The court also took judicial notice of that fact. The results achieved through the court's plan will meet the goals of the Indian Intervenors.

The Senate also argues that the failure to make the new district six a second majority-minority district would constitute a violation of the Voting Rights Act. The Senate's argument is founded on the principle that there is a right to proportional representation. No such right exists. 42 U.S.C. § 1973 ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population"); *see also Gingles*, 478 U.S. at 46 (by itself, lack of proportional voting does not constitute a violation of the Voting Rights

Act); *Wesley v. Collins*, 791 F.2d 1255 (6th Cir. 1986); *Butts v. City of New York*, 779 F.2d 141, 148 (2d Cir. 1985), *cert. denied*, 478 U.S. 1021 (1986). Under any of the proposed plans, district six encompasses hundreds of square miles of sparsely populated areas in the eastern and northern parts of the state. Applying the totality of the circumstances test under the Voting Rights Act, the court finds that adopting the Senate's reasoning would result in block-by-block redistricting over a large geographical portion of Maricopa County. The effect would be the fragmentation and splintering of communities of interest, resulting in an unreasonable gerrymander. *See Gingles*, 478 U.S. at 49.

C. Neutral Criteria

The court next turns its attention to the neutral criteria for drawing congressional districts: (1) geographical compactness and contiguity, (2) preserving communities of interest and existing districts and (3) avoiding the unnecessary and invidious outdistricting of incumbents. *See Carstens*, 543 F.Supp at 87-88; *LaComb*, 541 F. Supp. at 148; *Riley*, 533 F. Supp. at 1180-81.

The court-drawn districts are compact. The plan follows natural boundaries, precinct lines and county lines whenever possible. Unlike the House and Senate plans, the court plan avoids unusual boundary lines. Thus, community interests remain undivided whenever possible and the court plan makes more effective representation possible. *See Carstens*, 543 F. Supp. at 88.

To the extent possible, the court plan also respects the wishes of various communities of interest. Preserving

communities of interest is important because "the sense of community derived from established governmental units tends to foster effective representation." *Id.* Thus, based on testimony from members of the Hopi Reservation, the court placed the Hopi Reservation in district three. Members of the Hopi Reservation testified that they did not want to be placed in the same district as the Navajo Reservation. Indeed, this was the principal reason for their intervention in this lawsuit. The court is well aware of the historical tension and present competition between these two tribes for resources. Out of respect for these differences, the court plan places the Hop Reservation in district three, a position ultimately conceded by all of the parties.[4] The plan further groups those Indian Tribes with similar interests within the same districts and does not split any reservations between districts.

The court also placed Flagstaff in district six to balance out the influence of Maricopa County. Consequently, there will be a broader range of interests represented beyond the interests of Maricopa County. Thus, the court's plan makes more effective representation possible for Arizona citizens living outside of the metropolitan Phoenix area.

The plan further avoids the unnecessary or invidious outdistricting of incumbents. As earlier explained, the maintenance of incumbents provides the constituents with some continuity. Unlike the Senate and Hispanic

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[4] The Court has also included the Moenkopi Hopi land lying northwest of the main reservation. Moenkopi is connected to the main reservation by Highway 264 and is, therefore, contiguous.

plans, the court plan does not outdistrict any of the incumbents.

This plan best serves the interests of the citizens of Arizona. It groups persons with similar interests in the same district while recognizing the need for good government lines. It also provides the Hispanics in district two with an opportunity to influence an election so that they may continue to elect a candidate of their choice.

IV. ANALYSIS OF THE OTHER PLANS

A. The House Plan

The major problem with the House plan is its version of district two. In order to obtain a greater percentage of the Hispanic population, the House plan includes the major Hispanic areas within southern Arizona and Maricopa County. This would create a district with a total minority population of approximately 67 percent, and an Hispanic voting-age population of 51.1 percent. The House argues that such a population is necessary to comply with the Voting Rights Act. However, in light of the testimony, these percentages are unnecessary.

House district two also forces a representative to cover at least three separate media markets and maintain several additional satellite offices. This poses an additional burden on a representative's limited staff and resources. The court finds that it is more reasonable to put the areas of eastern Pinal County and southern Gila County into district six, and to keep southern Cochise County in district five. Stretching district two to include

these areas does not conform to the principle of compactness.

The court also finds that the House plan fails to follow the principle of compactness by including the El Mirage-Surprise area in district two. The inclusion of El Mirage and Surprise in district two adds approximately one percent to the Hispanic population of that district. Although these areas probably have more in common with the citizens in House district two, the court finds no reasonable way to include these communities in district two.

B. The Senate Plan

The main problem with the Senate Plan is its version of district six. On the full state map, the Senate's district six begins in northwestern Arizona near Lake Mead, winding its way through the Navajo and Hopi Reservations in northeastern Arizona, turning south to catch all of Navajo County and most of Apache County, dipping into portions of Graham and Greenlee counties, capturing most of Pinal County, slipping into Pima county to capture East Tucson, and finally ending in Maricopa County.

The most perplexing aspect of this plan is its checkerboard effect in Maricopa County. The Senate's district six winds its way through Queen Creek and Higley and hopscotches block-by-block through Chandler and Mesa. It then traverses South Mountain Park in order to envelop certain precincts in southern Phoenix and Glendale. Testimony indicated that a person driving on one street through Mesa could potentially drive in and out of the Senate districts one and six at least ten times.

Senate district six also completely ignores the ongoing dispute between the Hopis and the Navajos. At the trial, the Senate indicated its willingness to put the Hopi and the Navajo Reservations in separate districts, but offered no suggestion on how to correct the other districts to preserve population equality.

Furthermore, the Senate plan includes Green Valley within district two. Green Valley is a retirement community which was previously located in congressional district five. No other plan has Green Valley in district two. The Hispanic Intervenors and Congressman Pastor specifically object to the inclusion of it in district two. The court agrees that Green Valley should remain in district five.

Consequently, the court finds that the Senate's plan is not conducive to the principles of good government. A representative from the Senate's district six would be hard-pressed to ascertain which neighborhood he or she represented. The Senate plan is the ultimate fragmentation of counties, cities and neighborhoods, and consequently fails to promote the principles of good government. *See Carstens,* 543 F. Supp. at 88; *LaComb,* 541 F. Supp. at 148.

Finally, the Senate plan transgresses another neutral criterion by failing to place incumbents within their own districts. The Senate plan arbitrarily redistricts Congressman Stump, the current representative in district three, into Senate district two. This arbitrary outdistricting violates the good government criteria. *See Riley,* 533 F. Supp. at 1180.

C. The Hispanic Intervenors' Plan

The Hispanic Intervenors' plan closely resembles the Senate's plan with two major exceptions. First, the Hispanics include Green Valley in district five instead of district two. Second, although the Hispanics' version of district six does not have the checkerboard appearance of the Senate's plan, it envelops similar precincts in Maricopa County and splits several communities. The Hispanics' version of district six also includes parts of East Tucson and dips into western Pima County, stopping just above the Mexican border. This virtually splits the Hispanics' district two in half. Further, like the Senate plan, the Hispanic Intervenors unnecessarily fail to include Congressman Stump in their version of district three.

Consequently, the Hispanics' plan, like the Senate plan, is contrary to the principles of good government outlined in the neutral criteria.

D. The Pastor Plan

The Pastor plan shares many of the problems the court found in the Senate and the Hispanic plans. Although the Pastor plan tries to incorporate state legislative district lines in order to carve the Hopi Reservation out of district six, at the trial Congressman Pastor readily acknowledged that the entire Hopi Reservation should be placed within district three. The Pastor plan also creates the checkerboard effect by hopscotching its way through Maricopa County.

E. The Indian Compromise Plan

The Indian Compromise Plan is superior to all other proposed plans and was the best attempt at drawing fair congressional districts. The Indian Compromise Plan includes all of the Hopi Reservation in district three. The Indian Compromise Plan also has all of the incumbents located in their respective districts.

This plan has some substantial differences from the House plan. First, it includes eastern Pinal County and southern Gila County in district six. Second, it includes southern Cochise County in district five. The result is a reduction of the projections that are apparent in all of the other plans.

Despite the merits of the Indian Compromise Plan, the refinements in the court plan make the court's plan superior to all other plans. First, by including Flagstaff in district six, the court plan balances out the interests within the district. Second, by placing the City of Chandler in district one and the less populated, but growing, Gilbert area in district six, the court's plan allows the rural areas to be more competitive in district six. Third, district six should not spill over South Mountain into the Phoenix area for the purpose of including two precincts in South Phoenix. Those two precincts will be better served in district two, where their neighboring precincts are located.

V. FINDINGS

Based on all of the evidence submitted at trial the court finds:

1. There has been insufficient evidence of polarized voting in Arizona to warrant remedial action under the Voting Rights Act.

2. The court plan is superior to all other plans. Given the geography and population of Arizona, the court-drawn districts are virtually equal in population, compact and contiguous, preserve communities of interest to the extent possible and avoid the unnecessary or invidious outdistricting of incumbents;

3. The court plan is not one "reflecting the policy choices of the elected representatives of the people." *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981). Rather, the plan solely reflects the decision of this court. The plan, therefore, is not subject to preclearance under section five of the Voting Rights Act. *Id.; Wise v. Lipscomb*, 437 U.S. 535, 542 (1978); *Connor v. Johnson*, 402 U.S. 690, 691 (1971).

THE COURT FURTHER FINDS that the legislature passed a session law granting the counties authority to designate a convenient number of precincts and define the boundaries of election precincts within thirty days after the enactment of legislative district changes. Laws 1992 (5th Spec. Sess.) Ch. 2. The Legislature also directed that the definitions of precincts be as otherwise prescribed by law, which of necessity includes their establishment within congressional and other boundaries. A.R.S. § 16-411(A).

IT IS THEREFORE ORDERED that:

1. The court plan be implemented. Appendix A accurately describes the districts according to the voter tabulation districts and census blocks. The maps, attached as

Appendix B, are a true and accurate description of the court's plan. Appendix C accurately describes the demographic characteristics of the court's plan.

2. Based on the legislative intent to give the counties additional time to comply with their duties to establish precincts, the court shall grant the counties until 5:00 p.m., Monday, May 18, 1992 to comply with A.R.S. section 16-411(A) and to submit those precinct boundary changes to the Department of Justice for preclearance.

3. If preclearance of any precinct boundary changes is not received by June 1, 1992, the court authorizes interim use of precinct boundaries in the 1992 primary and general elections and such other elections as may follow until the precinct lines are precleared. 28 C.F.R. § (b), (c). The interim use of the precinct boundaries as set forth in 28 C.F.R. section 51.18 is expressly conditioned upon each county filing an affidavit with this court certifying it submitted precinct boundary changes to the Department of Justice, pursuant to the relevant parts of 28 C.F.R. sections 51.26 through 51.28. The precinct and polling place changes still are subject to section 5 review by the Department of Justice even though the court authorizes their emergency interim use. 28 C.F.R. § 51.18(b), (c).

The interim use is necessitated by the "proximity of a forthcoming election and the mechanics and complexities of the state's election laws." *Terrazas v. Clements*, 537 F. Supp. 514, 537 (N.D. Tex. 1982). First, the period for filing candidate nominating petitions begins on May 26, 1992 and ends on June 25, 1992. A.R.S. §§ 16-311, 16-314. Second, in order to determine the eligibility of candidates and those who signed their nominating petitions, all

boundary lines must be established. *See* A.R.S. § 16-314. Third, all matters pertaining to candidate qualification must be resolved before ballots can be printed. A.R.S. §§ 16-314, 16-351. Fourth, ballots must be printed and available for absentee voting, which begins on August 6, 1992. A.R.S. §§ 16-542, 16-545. The absentee and regular ballots must be identical. A.R.S. § 16-545(A). Fifth, the primary election is scheduled for September 8, 1992. A.R.S. §§ 16-201, 16-211. Given the compressed nature of Arizona's election schedule and to avoid further delays which may disenfranchise or confuse voters, the court chooses to order the interim use of precinct boundaries rather than modify the aforementioned dates.

4. The court retains jurisdiction over this case for purposes of issuing any orders necessary for executing the court-drawn plan. The court also retains jurisdiction over the redistricting of the state legislature until a legislative redistricting plan is precleared by the Department of Justice.

5. The court plan will remain in effect for all congressional elections through the year 2000, unless the Arizona Legislature enacts its own plan which meets the requirements of federal law, providing that no such plan be applied to any election unless it has been precleared sufficiently in advance to permit its implementation by the affected counties.

6. The Arizona House and Senate shall provide technical assistance to the Arizona counties in implementing the court plan.

7. By stipulation of the parties and court order, Alan Maguire and Tony Sissons functioned as special technical

advisors to the court for the purpose of drawing the court's plan. Again by stipulation and court order, Lisa Hauser, Assistant Attorney General, served as special counsel to the court on Arizona election laws and procedures for the purpose of implementing the court plan for the 1992 primary and general elections. As special advisors to the court, these individuals are prohibited from discussing any aspect of their consultation with the court. However, nothing in this order shall prevent these individuals from carrying out their respective duties or representation of their clients. The House and Senate shall be responsible for paying the fees of Tony Sissons and Alan Maguire.

DATED this 30th day of April, 1992.

/s/ Stephen M. McNamee
Stephen M. McNamee
United States
District Judge

/s/ Alfredo C. Marquez
Alfredo C. Marquez
United States
District Judge

/s/ Charles E. Wiggins
Charles E. Wiggins
United States
Circuit Judge

Copies to all counsel of record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ARIZONANS FOR FAIR REPRESENTATION, et al., Plaintiffs, vs. J. FIFE SYMINGTON, et al., Defendants.	No. CIV 92-256-PHX-SMM **ORDER OF AMENDED APPENDICES** (Filed May 6, 1992)

The court's written memorandum of Decision filed on May 5, 1992 is the controlling factor in the court's congressional redistricting plan. Due to an inconsistency between the written order and one of the maps describing the court's plan in the appendices IT IS ORDERED that the attached amended appendices replace the appendices filed with the order on May 5, 1992.

DATED this 6th day of May, 1992.

/s/ Stephen M. McNamee
United States
District Judge

copies to all counsel

ARIZONA CONGRESSIONAL DISTRICTS

	1	2	3	4	5	6
Population						
White	530,941	367,125	534,991	562,888	537,525	429,716
Black	19,280	41,578	11,849	11,434	18,172	8,211
Am. Indian	10,281	27,762	19,928	7,407	5,468	132,681
Asian	14,290	7,712	6,791	10,840	11,522	4,051
Other	36,080	166,694	37,312	18,302	38,184	36,213
TOTAL	610,872	610,871	610,871	610,871	610,871	610,872
Hispanic	80,350	308,256	72,113	47,468	100,874	79,277
NH White	488,838	233,088	502,004	534,772	476,765	390,718
NH Black	18,506	38,897	11,314	11,021	17,243	7,828
NH Am. Indian	8,897	22,518	18,520	6,860	4,458	128,838
NH Asian	13,672	6,500	6,284	10,334	10,927	3,813
NH Other	609	1,612	636	416	604	398
TOTAL	610,872	610,871	610,871	610,971	610,871	610,872

ARIZONA CONGRESSIONAL DISTRICTS – Continued

	1	2	3	4	5	6
Voting Age Population						
White	405,512	266,981	411,248	432,519	416,349	319,570
Black	12,813	27,038	7,518	7,503	12,236	5,467
Am. Indian	6,518	16,319	11,934	4,858	3,800	74,600
Asian	10,548	5,634	4,643	7,720	8,417	2,763
Other	22,584	98,309	21,950	11,779	24,568	22,411
TOTAL	457,975	414,281	457,293	464,379	465,370	424,811
Hispanic	50,673	185,458	42,853	30,792	65,169	48,019
NH White	378,607	183,797	391,309	414,148	376,887	295,607
NH Black	12,387	25,612	7,247	7,292	11,742	5,273
NH Am. Indian	5,816	13,547	11,218	4,573	3,212	73,060
NH Asian	10,139	4,880	4,347	7,362	8,059	2,615
NH Other	353	987	319	212	301	237
TOTAL	457,975	414,281	457,293	464,379	465,370	424,811
Registration						
Democrats	112,800	134,200	117,100	116,500	156,100	139,700
Republicans	169,500	59,800	170,400	189,200	150,700	129,100
Other	39,200	23,000	33,800	40,300	45,000	26,400
TOTAL	321,500	217,000	321,300	346,000	351,800	295,200

Information reflects 1990 Census data and 1990 voter registration

ARIZONA CONGRESSIONAL DISTRICTS

	1	2	3	4	5	6
Population						
White	86.92%	60.10%	87.58%	92.15%	87.99%	70.34%
Black	3.16%	6.81%	1.94%	1.87%	2.97%	1.34%
Am. Indian	1.68%	4.54%	3.26%	1.21%	0.90%	21.72%
Asian	2.34%	1.26%	1.11%	1.77%	1.89%	0.66%
Other	5.91%	27.29%	6.11%	3.00%	6.25%	5.93%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Hispanic	13.15%	50.46%	11.80%	7.77%	16.51%	12.98%
NH White	80.02%	38.16%	82.18%	87.54%	78.05%	63.96%
NH Black	3.03%	6.37%	1.85%	1.80%	2.82%	1.28%
NH Am. Indian	1.46%	3.69%	3.03%	1.12%	0.73%	21.09%
NH Asian	2.24%	1.06%	1.03%	1.69%	1.79%	0.62%
NH Other	0.10%	0.26%	0.10%	0.07%	0.10%	0.07%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

ARIZONA CONGRESSIONAL DISTRICTS – Continued

	1	2	3	4	5	6
Voting Age Population						
White	88.54%	64.44%	89.93%	93.14%	89.47%	75.23%
Black	2.80%	6.53%	1.64%	1.62%	2.63%	1.29%
Am. Indian	1.42%	3.94%	2.61%	1.05%	0.82%	17.56%
Asian	2.30%	1.36%	1.02%	1.66%	1.81%	0.65%
Other	4.93%	23.73%	4.80%	2.54%	5.28%	5.28%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Hispanic	11.06%	44.77%	9.37%	6.63%	14.00%	11.30%
NH White	82.67%	44.37%	85.57%	89.18%	80.99%	69.59%
NH Black	2.70%	6.18%	1.58%	1.57%	2.52%	1.24%
NH Am. Indian	1.27%	3.27%	2.45%	0.98%	0.69%	17.20%
NH Asian	2.21%	1.18%	0.95%	1.59%	1.73%	0.62%
NH Other	0.08%	0.24%	0.07%	0.05%	0.06%	0.06%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Registration						
Democrats	35.10%	61.80%	36.40%	33.70%	44.40%	47.30%
Republicans	52.70%	27.60%	53.00%	54.70%	42.80%	43.70%
Other	12.20%	10.60%	10.50%	11.60%	12.80%	8.90%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Registration totals may not add due to rounding.

Judith Sanders-Castro
MEXICAN-AMERICAN LEGAL DEFENSE
& EDUCATIONAL FUND
140 East Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476
TX State Bar #17595255
Attorney for Plaintiffs/Intervenors

Jose de Jesus Rivera
RIVERA, SCALES & KIZER
320 East McDowell, Ste. 315
Phoenix, Arizona 85004
(602) 253-2523
AZ State Bar #004604
Co-Counsel for Plaintiffs/Intervenors

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

ARIZONANS FOR FAIR REPRESENTATION, INC., an Arizona non-profit corporation; PAUL FANNIN; JOHN MAWHINNEY; STAN TURLEY, Plaintiffs, vs. J. FIFE SYMINGTON, Governor of the State of Arizona; RICHARD D. MAHONEY, Secretary of State of the State of Arizona; ARIZONA HOUSE OF REPRESENTATIVES; ARIZONA STATE SENATE, Defendants.	**NO. CIV 92-0256 PHX SMM** **NOTICE OF APPEAL** (Filed May 29, 1992)

Hispanic Chamber of Commerce, Arizona Hispanic Community Forum, Edward Valenzuela, Richard Zazueta and Valerie Ann Vidal, Plaintiff/Intervenors herein (collectively, "Hispanic Intervenors"), hereby appeal, and give notice of their appeal, to the Supreme Court of the United States of the entirety of this Court's Order which was entered on April 30, 1992, and lodged on May 5, 1992.

This appeal is taken pursuant to 28 U.S.C. § 1253.

RESPECTFULLY SUBMITTED this 28 day of May, 1992.

MEXICAN-AMERICAN LEGAL
DEFENSE & EDUCATIONAL FUND

BY /s/ Judith Sanders-Castro
Judith Sanders-Castro
140 East Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476
TX State Bar #17595255
Attorney for Plaintiffs/ Intervenors

CERTIFICATE OF SERVICE

I certify that on this 29 day of May, 1992, I sent a copy of the foregoing document by U.S. mail, postage prepaid to each of the following:

John P. Frank, Esq.
Janet Napolitano, Esq.
LEWIS AND ROCA
40 North Central Avenue
Phoenix, Arizona 85004-4429
Attorneys for Defendant Arizona State Senate

Neil Vincent Wake, Esq.
LAW OFFICES OF NEIL VINCENT WAKE
The Brookstone, Suite 275
340 East Palm Lane
Phoenix, Arizona 85004
Attorneys for Plaintiffs

Harry J. Cavanagh, Esq.
David A. Van Engelhoven, Esq.
Mark J. DePasquale, Esq.
O'CONNOR, CAVANAGH, ANDERSON, WESTOVER, KILLINGSWORTH AND BESHEARS
One East Camelback Road, Suite 1100
Phoenix, Arizona 85012-1656
Attorney for Defendants Arizona State House of Representatives

Lisa T. Hauser, Esq.
OFFICE OF THE ATTORNEY GENERAL
1275 West Washington
Phoenix, Arizona 85007
Attorneys for Defendant Symington and Mahoney

The Honorable Alfredo C. Marquez
UNITED STATES DISTRICT COURT
55 East Broadway
Tucson, Arizona 85701

C. Timothy Delaney, Esq.
BROWN & BAIN, P.A.
2901 North Central
Phoenix, Arizona 85001-0400
Attorneys for House Democratic Caucus

Daniel M. Kolkey, Esq.
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, CA 90071-3197
Attorney for Defendants Arizona State House of Representatives

Daniel R. Ortega, Jr., Esq.
ORTEGA & MORENO, P.C.
802 North Third Avenue
Phoenix, Arizona 85003
Attorneys for Plaintiff/Intervenor Pastor

Dan M. Durrant, Esq.
STREICH LANG
2100 First Interstate Bank Plaza
100 West Washington
Phoenix, Arizona 85003-1897
Attorneys for Republican Caucus
of the Arizona State Senate

Joe P. Sparks, Esq.
Kevin T. Tehan, Esq.
SPARKS & SILER
7530 First Street
Scottsdale, Arizona 85251
Attorneys for Intervenors San Carlos
Apache Tribe, et al.

William P. Mahoney, Jr., Esq.
845 North Third Avenue
Phoenix, Arizona 85003
Attorney for President of the Navajo Nation

Robert C. Brauchli
BRAUCHLI AND BRAUCHLI, P.C.
6650 North Oracle Road
Long-Almli Building, Suite 110
Tucson, Arizona 85701
Attorneys for White Mountain Apache Tribe

Judis Andres, Esq.
710 West Roosevelt
Phoenix, Arizona 85007
Attorney for NAACP (Arizona State Conference)

Joseph W. Howard, Esq.
HOWARD & GLENN, P.C.
550 East Cottonwood Lane
P.O. Box M
Casa Grande, Arizona 85222
Attorneys for Mejia and Mejia

Rodney B. Lewis, Esq.
Attorney at Law
P.O. Box 400
Sacaton, Arizona 85247
Attorney for Gila River Indian Community

Honorable Charles E. Wiggins
Ninth Circuit Court of Appeals
50 W. Liberty Street, Suite 950
Reno, NV 89501; and

Jose de Jesus Rivera
RIVERA, SCALES & KIZER
320 E. McDowell, Ste 315
Phoenix, Arizona 85004
Co-Counsel for Hispanic Intervenors

By /s/ Patricia Duffy

Judith Sanders-Castro
MEXICAN-AMERICAN LEGAL DEFENSE
& EDUCATIONAL FUND
140 East Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476
TX State Bar #17595255
Attorney for Plaintiffs/Intervenors

Jose de Jesus Rivera
RIVERA, SCALES & KIZER
320 East McDowell, Ste. 315
Phoenix, Arizona 85004
(602) 253-2523
AZ State Bar #004604
Co-Counsel for Plaintiffs/Intervenors

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

ARIZONANS FOR FAIR REPRESENTATION, INC., an Arizona non-profit corporation; PAUL FANNIN; JOHN MAWHINNEY; STAN TURLEY, Plaintiffs, ED PASTOR; HISPANIC CHAMBER OF COMMERCE INC., ARIZONA HISPANIC COMMUNITY FORUM, EDWARD VALENZUELA, RICHARD ZAZUETA, VALERIE ANN VIDAL; THE SAN CARLOS APACHE TRIBE, a Federally Recognized Indian Tribe, and RALEIGH THOMPSON, Chairman, and BURNETTE ROPE, Vice Chairman, and as Individual Tribal	**NO. CIV 92-0256 PHX SMM** **HISPANIC PLAINTIFFS/ INTERVENORS AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES** (Filed June 1, 1992)

Members, VERNON MASAYESVA, Chairman, LORIS MINKLER and WAYNE TAYLOR, JR., Individual Tribal Members of The Hopi Indian Tribe, a Federally Recognized Indian Tribe, THE TONTO APACHE TRIBE, a Federally Recognized Indian Tribe, LOUISE C. LOPEZ, Chairman, JERI JOHNSON, Vice Chairman, and as Individual Tribal Members, YAVAPAI-APACHE INDIAN COMMUNITY, CAMP VERDE RESERVATION, DAVID KWAIL, Chairman, STANLEY JACKSON, Vice Chairman, and as Individual Tribal Members, THE HAVASUPAI TRIBE, a Federally Recognized Indian Tribe, DON WATAHOMIGIE, Chairman, THOMAS SIYUJA, SR., Vice Chairman, and as Individual Tribal Members, THE COCOPAH INDIAN TRIBE, a Federally Recognized Indian Tribe, PETE SOTOS, Individual Tribal Member,

Plaintiffs/Intervenors,

vs.

J. FIFE SYMINGTON, Governor of the State of Arizona; RICHARD D. MAHONEY, Secretary of State of the State of Arizona; ARIZONA STATE HOUSE OF REPRESENTATIVES; ARIZONA STATE SENATE,

Defendants.

Hispanic Chamber of Commerce, Arizona Hispanic Community Forum, Edward Valenzuela, Richard Zazueta and Valerie Ann Vidal, Plaintiff/Intervenors herein (collectively, "Hispanic Intervenors"), hereby appeal, and give notice of their appeal, to the Supreme Court of the United States of the entirety of this Court's Order which was entered on April 30, 1992, and lodged on May 5, 1992.

This appeal is taken pursuant to 28 U.S.C. § 1253.

RESPECTFULLY SUBMITTED this 1st day of June, 1992.

MEXICAN-AMERICAN LEGAL
DEFENSE & EDUCATIONAL FUND

BY /s/ Judith Sanders-Castro
Judith Sanders-Castro
140 East Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476
TX State Bar #17595255
Attorney for Plaintiffs/ Intervenors

CERTIFICATE OF SERVICE

I certify that on this 1st day of June, 1992, I sent a copy of the foregoing document by U.S. mail, postage prepaid to each of the following:

John P. Frank, Esq.
Janet Napolitano, Esq.
LEWIS AND ROCA
40 North Central Avenue
Phoenix, Arizona 85004-4429
Attorneys for Defendant Arizona State Senate

Neil Vincent Wake, Esq.
LAW OFFICES OF NEIL VINCENT WAKE
The Brookstone, Suite 275
340 East Palm Lane
Phoenix, Arizona 85004
Attorneys for Plaintiffs

Harry J. Cavanagh, Esq.
David A. Van Engelhoven, Esq.
Mark J. DePasquale, Esq.
O'CONNOR, CAVANAGH, ANDERSON, WESTOVER, KILLINGSWORTH AND BESHEARS
One East Camelback Road, Suite 1100
Phoenix, Arizona 85012-1656
Attorney for Defendants Arizona State House of Representatives

Lisa T. Hauser, Esq.
OFFICE OF THE ATTORNEY GENERAL
1275 West Washington
Phoenix, Arizona 85007
Attorneys for Defendant Symington and Mahoney

The Honorable Alfredo C. Marquez
UNITED STATES DISTRICT COURT
55 East Broadway
Tucson, Arizona 85701

C. Timothy Delaney, Esq.
BROWN & BAIN, P.A.
2901 North Central
Phoenix, Arizona 85001-0400
Attorneys for House Democratic Caucus

Daniel M. Kolkey, Esq.
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, CA 90071-3197
Attorney for Defendants Arizona State House of Representatives

Daniel R. Ortega, Jr., Esq.
ORTEGA & MORENO, P.C.
802 North Third Avenue
Phoenix, Arizona 85003
Attorneys for Plaintiff/Intervenor Pastor

Dan M. Durrant, Esq.
STREICH LANG
2100 First Interstate Bank Plaza
100 West Washington
Phoenix, Arizona 85003-1897
Attorneys for Republican Caucus
of the Arizona State Senate

Joe P. Sparks, Esq.
Kevin T. Tehan, Esq.
SPARKS & SILER
7530 First Street
Scottsdale, Arizona 85251
Attorneys for Intervenors San Carlos
Apache Tribe, et al.

William P. Mahoney, Jr., Esq.
845 North Third Avenue
Phoenix, Arizona 85003
Attorney for President of the Navajo Nation

Robert C. Brauchli
BRAUCHLI AND BRAUCHLI, P.C.
6650 North Oracle Road
Long-Almli Building, Suite 110
Tucson, Arizona 85701
Attorneys for White Mountain Apache Tribe

Judis Andres, Esq.
710 West Roosevelt
Phoenix, Arizona 85007
Attorney for NAACP (Arizona State Conference)

Joseph W. Howard, Esq.
HOWARD & GLENN, P.C.
550 East Cottonwood Lane
P.O. Box M
Casa Grande, Arizona 85222
Attorneys for Mejia and Mejia

Rodney B. Lewis, Esq.
Attorney at Law
P.O. Box 400
Sacaton, Arizona 85247
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Honorable Charles E. Wiggins
Ninth Circuit Court of Appeals
50 W. Liberty Street, Suite 950
Reno, NV 89501; and

Jose de Jesus Rivera
RIVERA, SCALES & KIZER
320 E. McDowell, Ste 315
Pheonix, Arizona 85004
Co-Counsel for Hispanic Intervenors

By /s/ Patricia Duffy